

Assembly Bill No. 2890

CHAPTER 776

An act to amend Section 3320 of the Civil Code, to amend Section 14838.5 of the Government Code, to amend Section 38079 of the Health and Safety Code, to amend Sections 10295.5, 10300, 10302.5, 10302.6, 10304, 10307, 10308, 10308.5, 10309, 10310, 10311, 10312, 10313, 10314, 10315, 10318, 10319, 10320, 10320.5, 10321, 10325, 10326, 10327, 10328, 10330, 10331, 10332, 10333, 10334, 12100.5, 12100.7, 12101, 12102, 12103, 12104, 12108, 12109, 12112, 12113, and 12120 of, to amend the heading of Article 3 (commencing with Section 10300) of Chapter 2 of, to amend the heading of Chapter 2 (commencing with Section 10290) of, and to amend the heading of Chapter 3 (commencing with Section 12100) of, Part 2 of Division 2 of, and to repeal Sections 10295.1, 10295.3, 12111, and 12113.5 of, the Public Contract Code, relating to public contracts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2000. Filed
with Secretary of State September 27, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2890, Committee on Consumer Protection, Governmental Efficiency and Economic Development. Public contracts.

Under existing law, a state agency may award a contract for goods, services, or information technology that has an estimated value between \$2,500 and \$50,000 by obtaining quotations from at least 2 small businesses. For these contracts, a state agency does not have to comply with bidding and contract award requirements that govern contracts of greater value.

This bill would make corrective changes to these provisions, to clarify that contracts with a value greater than \$2,500 and less than \$50,000 do not have to comply with various provisions that generally govern public contracts.

Existing law generally governs the state procurement of materials, supplies, equipment, and services, and the acquisition of electronic data-processing and telecommunications goods and services.

This bill would make various technical and clarifying changes to these provisions and would delete outdated provisions.

This bill would incorporate additional changes in Section 14838.5 of the Government Code, proposed by SB 1049, to be operative only if SB 1049 and this bill are both chaptered and become effective on or before January 1, 2001, and this bill is chaptered last.

The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 3320 of the Civil Code is amended to read:

3320. (a) In each contract for public works of improvement, entered into on or after January 1, 1996, the public agency shall pay to the prime design professional any progress payment within 30 days of receipt of a written demand for payment in accordance with the contract, and the final retention payment within 45 days of receipt of a written demand for payment in accordance with the contract. If the public agency disputes in good faith any portion of the amount due, it may withhold from the payment an amount not to exceed 150 percent of the disputed amount. The disputed amount withheld is not subject to any penalty authorized by this section.

(b) If any amount is wrongfully withheld or is not timely paid in violation of this section, the prime design professional shall be entitled to a penalty of 1½ percent for the improperly withheld amount, in lieu of any interest otherwise due, per month for every month that payment is not made. In any action for the collection of amounts withheld in violation of this section, the prevailing party is entitled to his or her reasonable attorney's fees and costs.

(c) The penalty described in subdivision (b) is separate from, and in addition to, the design professionals' liens provided by Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3, mechanics' liens provided by Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3, and stop notices for public works provided in Chapter 3 (commencing with Section 3156) of Title 15 of Part 4 of Division 3.

(d) This section does not apply to state agency contracts subject to Section 927.6 of the Government Code.

(e) None of the rights or obligations created by this section between prime design professionals and public agencies apply to construction loan funds held by a lender pursuant to a construction loan agreement.

(f) For purposes of this section:

(1) "Public agency" means the state, any county, any city, any city and county, any district, any public authority, any public agency, any municipal corporation or other political subdivision or political corporation of the state.

(2) "Design professional" means a person licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code.

(3) "Prime design professional" means a design professional with a written contract directly with the public agency.

SEC. 2. Section 14838.5 of the Government Code is amended to read:

14838.5. (a) Notwithstanding the advertising, bidding, and protest provisions of Chapter 6 (commencing with Section 14825) of this code, and Chapter 2 (commencing with Section 10290) and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code, a state agency may award a contract for the acquisition of goods, services, or information technology that has an estimated value of greater than two thousand five hundred dollars (\$2,500), but less than fifty thousand dollars (\$50,000), to a small business, as long as the agency obtains price quotations from two or more small businesses.

(b) In carrying out subdivision (a), state agencies shall consider a responsive offer timely received from a responsible small business.

(c) If the estimated cost to the state is less than two thousand five hundred dollars (\$2,500) and for the acquisition of goods, services, or information technology, or a greater amount as administratively established by the director, a state agency shall obtain at least two price quotations from responsible suppliers whenever there is reason to believe a response from a single source is not a fair and reasonable price.

SEC. 2.5. Section 14838.5 of the Government Code is amended to read:

14838.5. (a) Notwithstanding the advertising, bidding, and protest provisions of Chapter 6 (commencing with Section 14825) of this code and Chapter 2 (commencing with Section 10290) and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code, a state agency may award a contract for the acquisition of goods, services, or information technology that has an estimated value of greater than five thousand dollars (\$5,000), but less than one hundred thousand dollars (\$100,000), to a small business, as long as the agency obtains price quotations from two or more small businesses.

(b) In carrying out subdivision (a), state agencies shall consider a responsive offer timely received from a responsible small business.

(c) If the estimated cost to the state is less than five thousand dollars (\$5,000) for the acquisition of goods, services, or information technology, or a greater amount as administratively established by the director, a state agency shall obtain at least two price quotations from responsible suppliers whenever there is reason to believe a response from a single source is not a fair and reasonable price.

SEC. 3. Section 38079 of the Health and Safety Code is amended to read:

38079. (a) All cooperative agreements, regardless of the size of the contracting nonprofit organization, are subject to the late payment provisions in Section 927.6 of the Government Code.

(b) In implementing this division, the department shall have the authority of, and be subject to, the provisions set forth in Chapter 2 (commencing with Section 124475) of Part 4 of Division 106, except that those provisions apply to all cooperative agreements, not only those agreements with clinics. However, notwithstanding Section 124500, moneys in the Clinic Revolving Fund of the State Department of Health Services shall be used for purposes of this division only upon appropriation of funds by the Legislature for that purpose.

SEC. 4. The heading of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code is amended to read:

CHAPTER 2. STATE ACQUISITION OF GOODS AND SERVICES

SEC. 6. Section 10295.1 of the Public Contract Code is repealed.

SEC. 7. Section 10295.3 of the Public Contract Code is repealed.

SEC. 8. Section 10295.5 of the Public Contract Code is amended to read:

10295.5. (a) Notwithstanding any other provision of law, no state agency shall acquire or utilize sand, gravel, aggregates, or other minerals produced from a surface mining operation subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), unless the operation is identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code as having either of the following:

(1) An approved reclamation plan and financial assurances covering the affected surface mining operation.

(2) An appeal pending before the State Mining and Geology Board pursuant to subdivision (e) of Section 2770 of the Public Resources Code with respect to the reclamation plan or financial assurances.

(b) The department shall revise its procedures and specifications for the acquisition of sand, gravel, aggregates, and other minerals to ensure maximum compliance with this section.

(c) For purposes of this section, “minerals” means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

(d) The requirements of this section shall apply to mining operations on federal lands or Indian lands that are subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code) pursuant to a memorandum of understanding

between the Department of Conservation and the federal agency having jurisdiction over the lands.

SEC. 9. The heading of Article 3 (commencing with Section 10300) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code is amended to read:

Article 3. Competitive Bidding and Other Acquisition Procedures

SEC. 10. Section 10300 of the Public Contract Code is amended to read:

10300. (a) A Customer and Supplier Advocate shall be established in the department as a resource to state agencies and departments, and suppliers seeking information regarding the state process, procedures, and regulations for bidding on state contracts, and as a resource to bidders seeking to file a protest on award in accordance with this chapter. The advocate shall, at a minimum, provide the following services to the protesting bidder:

(1) Assistance to customer departments and agencies regarding contracting rules and regulations, and acquisition resource options.

(2) Assistance to the bidder in assessing the validity of the bidder's proposed grounds of filing the protest in accordance with the terms of the solicitation, as well as statutory or regulatory guidelines governing the solicitation in question.

(3) Provision of information to the protesting bidder regarding avenues and options available to the bidder to proceed with a formal protest of the award.

(b) The advocate shall make services, as specified in this section, available on a timely basis to the protesting bidder.

(c) Notification to bidders regarding the availability of services by the advocate shall be included in the solicitation. This notification shall also outline procedures and timelines for bidders who may wish to engage the services of the advocate.

SEC. 11. Section 10302.5 of the Public Contract Code is amended to read:

10302.5. All product specifications that the department or any other state agency prepares for goods for any contract entered into by any state agency for the acquisition of goods under Section 10295 are not subject to the review and adoption procedure under Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 12. Section 10302.6 of the Public Contract Code is amended to read:

10302.6. Product specifications as prepared by the department or any other state agency shall not be written with the intent of excluding goods manufactured, produced, grown, or otherwise originating in California.

SEC. 13. Section 10304 of the Public Contract Code is amended to read:

10304. All bids shall be sealed and shall be publicly opened and read at the time set forth in the solicitation, provided any person present desires the bids to be so read. No bids shall be considered which have not been received in the office of the department prior to the closing time for bids set forth in the invitations to bids. The department shall maintain confidentiality regarding each bid until the public opening and reading takes place.

SEC. 14. Section 10307 of the Public Contract Code is amended to read:

10307. The director shall establish statewide acquisition standards, the purpose of which shall be to ensure the necessary quality of goods acquired by or under the supervision of the department and to permit the consolidation of acquisitions in order to effect greater economies in state contracting.

SEC. 15. Section 10308 of the Public Contract Code is amended to read:

10308. Except as provided otherwise in this chapter, every acquisition of goods in excess of one hundred dollars (\$100) for any state agency shall be made by or under the supervision of the department. However, the state agency may specify the quality of the goods to be acquired. If the department determines that the quality specified by the agency is inconsistent with the statewide standards established by the director under Section 10307, it shall change the request to make it consistent with the standards, and it shall notify the state agency, within a reasonable time, before a contract is issued. If the agency is of the opinion the interests of the state would not be served by the acquisition of goods of a lesser quality or different than that specified by the agency, the agency may request a hearing before the State Board of Control and the board shall determine which goods will best serve the interests of the state, whereupon the department shall issue a contract for the goods specified by the State Board of Control.

SEC. 16. Section 10308.5 of the Public Contract Code is amended to read:

10308.5. Contractors shall certify in writing, under penalty of perjury, to the state agency awarding a contract, the minimum, if not exact, percentage of recycled content, both postconsumer material and secondary material as defined in Sections 12161 and 12200, in goods offered or products used in the performance of the contract, regardless of whether the product meets the required recycled product percentage as defined in Sections 12161 and 12200. The contractor may certify that the product contains zero recycled content. This section shall apply to all state contracts and, to the extent feasible, all federally funded contracts.



SEC. 17. Section 10309 of the Public Contract Code is amended to read:

10309. Except as provided in Sections 10332 and 10333, no state agency may acquire goods in the open market, unless permission has been given by the department, upon a showing of the necessity therefor.

SEC. 18. Section 10310 of the Public Contract Code is amended to read:

10310. Upon the request of the department, every state agency that is authorized by law to acquire goods shall designate some person in the agency whose duty it shall be to make reports to the department at times and in a manner as it may require.

SEC. 19. Section 10311 of the Public Contract Code is amended to read:

10311. (a) An estimate or requisition approved by the state agency in control of the appropriation or fund against which an acquisition is to be charged, is full authority for any contract for goods of the quality specified by the agency or determined by the State Board of Control as provided in this article made pursuant thereto by the department.

(b) The department shall issue a call for bids within 30 days after receiving a requisition for any goods that are regularly acquired within this state. The period of closing time designated in the invitations for bids shall be exclusive of holidays and shall be extended to the next working day after a holiday.

(c) Except as provided in subdivision (d), after the closing date for receiving any bids within or without this state, the contract shall be awarded or the bids shall be rejected within 45 days unless a protest is filed as provided in Section 10306.

(d) After the 45-day time period prescribed by subdivision (c), the department may in its sound discretion either award the contract to the lowest responsible bidder meeting specifications who remains willing to accept the award or else reject all bids.

(e) The amendments made to this section at the 1987–88 Regular Session of the Legislature do not constitute a change in, but are declaratory of, existing law.

SEC. 20. Section 10312 of the Public Contract Code is amended to read:

10312. Immediately upon the rendition of services or the delivery of goods, the disbursing officer shall transmit the invoice or demand for payment together with his or her sworn statement to the Controller. The sworn statement shall show that the services have been rendered and the goods delivered to the state agency in accordance with the contract and law.

SEC. 21. Section 10313 of the Public Contract Code is amended to read:

10313. The director may make the services of the department under this article available, upon such terms and conditions as he or she may deem satisfactory, to any tax-supported public agency in the state, including a school district, for assisting the agency in the acquisition of television communications equipment.

SEC. 22. Section 10314 of the Public Contract Code is amended to read:

10314. Any contract for goods to be manufactured by the contractor specially for the state and not suitable for sale to others in the ordinary course of the contractor's business may provide, on such terms and conditions as the department deems necessary to protect the state's interests, for progress payments for work performed and costs incurred at the contractor's shop or plant, provided that not less than 10 percent of the contract price is required to be withheld until final delivery and acceptance of the goods, and provided further, that the contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the contract securing the faithful performance of the contract by the contractor.

SEC. 23. Section 10315 of the Public Contract Code is amended to read:

10315. The department may rent, lease, construct, and maintain warehouses and make the rules and regulations that are necessary for the proper and economical making of state acquisitions.

SEC. 24. Section 10318 of the Public Contract Code is amended to read:

10318. No state agency or employee thereof shall draft or cause to be drafted, any specifications for bids, in connection with the acquisition or contemplated acquisition of any goods or textbooks for use in the day and evening elementary schools of the state, in such a manner as to limit the bidding directly or indirectly, to any one bidder.

Bidders may be required to furnish a bond or other indemnification to the state against claims or liability for patent infringement.

SEC. 25. Section 10319 of the Public Contract Code is amended to read:

10319. To meet an emergency, goods of a perishable nature, in an amount not exceeding one hundred dollars (\$100) in value, may be acquired by a state agency without the permission of the department.

SEC. 26. Section 10320 of the Public Contract Code is amended to read:

10320. (a) The department shall annually prepare a delegation program for district agricultural associations to be administered by the Department of Food and Agriculture and the department pursuant to the following criteria:



(1) The department shall annually review acquisitions to be included in the program and the amount of delegation for each type of acquisition.

(2) The department shall annually review with the Department of Food and Agriculture the aggregate limit for the delegation program.

(3) The department shall annually communicate with each fair eligible for the delegation program, information relating to the procedure to be followed for using the delegation, including, but not limited to, the things included in the delegation program.

(b) The Division of Fairs and Expositions in the Department of Food and Agriculture shall include, as part of its annual expenditure review and approval process presented to the Joint Committee on Fairs Allocation and Classification, a section describing the purchasing delegation authority granted to all district agricultural associations pursuant to subdivision (a). This information shall include, but need not be limited to, the annual amount of purchasing delegation authority requested by, and delegated to, each district agricultural association.

SEC. 27. Section 10320.5 of the Public Contract Code is amended to read:

10320.5. (a) Commencing January 1, 1992, all state agencies subject to this chapter that enter into installment purchase or lease-purchase contracts shall make periodic payments, which shall include interest computed from a date no later than the acceptance date of the goods purchased pursuant to the contract. However, if the contract requires an acceptance test, interest shall be computed from a date no later than the first day of the successful acceptance test period. Unless otherwise provided for in the contract, periodic payments shall commence upon acceptance of the goods or, if the contract requires an acceptance test, as of the first day of the successful acceptance test period. Late charges shall accrue for any periodic payment not made to the contractor or its assigns from either the payment date provided in the contract or 60 days following the receipt of a valid invoice for the periodic payment, whichever is later. However, in the event any invoice is received prior to the acceptance date, the receipt date of the invoice shall be construed to be the acceptance date. Late charges under this section shall be assessed using the interest rate as specified in Section 927.6 of the Government Code.

(b) The department is authorized to refinance installment purchase contracts when, in the determination of the department, it is financially beneficial to the state to do so.

SEC. 28. Section 10321 of the Public Contract Code is amended to read:

10321. (a) The Legislature finds and declares that fairs are a valuable community resource and recognizes that local businesses

and local communities make valuable contributions to fairs that include direct and indirect support of fair programs. The Legislature further finds and declares that local businesses often provide opportunity purchases to local fairs that, for similar things available through the state purchasing program, may be acquired locally at a price equivalent to or less than that available through a statewide or regional contract.

(b) Notwithstanding any other provision of law, the Department of Food and Agriculture shall develop criteria to be applied for opportunity purchases that are made by district agricultural associations, county and citrus fruit fairs, and the California Exposition and State Fair, individually or cooperatively.

(c) As used in this section, opportunity purchases means acquisitions made locally, either individually or cooperatively, at a price equal to or less than the price available through the office on or off a statewide or regional contract.

SEC. 29. Section 10325 of the Public Contract Code is amended to read:

10325. Each quarter, the department shall, upon request, provide each city, county, city and county, district, local government body, or public corporation empowered to expend public funds for the acquisition of consumable goods and other interested parties with a list of those items available for acquisition under Section 10324. The department may supplement the quarterly lists with a monthly supplement of changes, additions and deletions. Terms, conditions, and specifications shall be provided upon request.

SEC. 30. Section 10326 of the Public Contract Code is amended to read:

10326. In establishing bid specifications for the acquisition of motor vehicles and in determining the lowest responsible bidder, consideration may be given by the state to the probable resale value of the vehicles as determined by recognized published used car marketing guides and other established historical evidence of future used motor vehicle value or, in lieu thereof, by contractual guarantee of the apparent low bidder that the resale value of the vehicle will be no less in proportion to bid price than any other comparable vehicle complying with specifications for which a bid was received.

SEC. 31. Section 10327 of the Public Contract Code is amended to read:

10327. Except for motor vehicles described in Section 43805 of the Health and Safety Code, the provisions of Article 1 (commencing with Section 43800) of Chapter 4 of Part 5 of Division 26 of the Health and Safety Code shall govern the acquisition of all motor vehicles by the state to the extent that the department determines that these low-emission vehicles are reasonable to meet state needs pursuant to Section 43804 of the Health and Safety Code.



SEC. 32. Section 10328 of the Public Contract Code is amended to read:

10328. The bid requirements prescribed in this article are not applicable to contracts for the acquisition of the following:

(a) Fluid milk and fluid cream, the price of which is established in accordance with Section 61871 of the Food and Agricultural Code.

(b) Fruits and vegetables procured under contract with growers for the use of canneries maintained and operated by state agencies, if these canneries are maintained and operated so that their canned products will meet the standards prescribed for similar commercially packed canned products under federal law.

(c) Agricultural surpluses that are available to the state or its agencies by any governmental agency.

SEC. 33. Section 10330 of the Public Contract Code is amended to read:

10330. On July 1 of each year, the department shall establish the minimum dollar level below which authority to acquire goods shall be delegated to state agencies that meet the requirements of Section 10333. The level established at eight hundred dollars (\$800) on January 1, 1983, and adjusted on July 1, 1983, pursuant to former Section 14792.1 of the Government Code, shall be retained and adjusted each July 1 thereafter to reflect, at a minimum, the percentage change from April 1 of the prior year to April 1 of the current year in the California Consumer Price Index for all items, as determined by the California Department of Industrial Relations.

SEC. 34. Section 10331 of the Public Contract Code is amended to read:

10331. The department shall establish a program for delegating authority to acquire goods to state agencies that meet the requirements of Section 10333. Each delegation shall be subject to annual review by the department. Delegated authority may be withdrawn at any time the department finds that the state agency to which authority has been delegated is not in compliance with the requirements of Section 10333.

SEC. 35. Section 10332 of the Public Contract Code is amended to read:

10332. Any state agency that receives delegated authority to acquire goods shall be authorized, at a minimum, to make the following types of acquisitions:

(a) Acquisitions not exceeding the dollar value established pursuant to Section 10330.

(b) Acquisitions in any amount of goods available under an unexpired statewide or regional contract. Acquisitions of goods for which a valid statewide or regional contract is in effect may not be made, without the approval of the office, from a supplier other than the supplier with whom the state has a valid contract.

(c) Acquisitions in any amount of goods that state agencies are required, by Section 2807 of the Penal Code, to acquire from the Prison Industry Authority.

(d) Acquisitions not exceeding fifteen thousand dollars (\$15,000) of goods designated in price schedules that the office has established with suppliers. Acquisitions not exceeding fifteen thousand dollars (\$15,000) of goods designated in price schedules may be made from a supplier other than the supplier specified on a price schedule if another supplier offers the same or equivalent goods at a price lower than the price established in the price schedule. The agency shall notify the office prior to making the acquisition. The acquisition may be made 48 hours after receipt of the notice by the office unless the office advises the agency that the goods to be acquired are not the same or equivalent to the goods specified on a price schedule.

(e) Acquisitions not exceeding fifteen thousand dollars (\$15,000) of goods that are available from the state warehouses but which the state agency can acquire from another supplier at a price lower than the price charged by the department. The agency shall notify the office prior to making the acquisition. The acquisition may be made 48 hours after receipt of the notice by the office unless the office advises the agency that the goods to be acquired are not the same or equivalent to the goods available from the state warehouses.

SEC. 36. Section 10333 of the Public Contract Code is amended to read:

10333. (a) The department shall delegate purchasing authority, as specified in Section 10332, to any state agency that does all of the following:

(1) Designates an agency officer as responsible and directly accountable for the agency's purchasing program.

(2) Establishes written policies and procedures, including procedures for ensuring and documenting competitive purchasing, complying with purchasing standards established pursuant to Section 10307, inspecting acquired products for compliance with specifications, reporting contractor failures to deliver products as specified in contracts, ensuring that agency contracting personnel are free from conflict of interest, and complying with other provisions of law as the department may require.

(3) Establishes procedures for complying with the provisions of the Small Business Procurement and Contract Act. The procedures shall include procedures for meeting the goals for the extent of participation of small businesses in state contracting as established by the department pursuant to subdivision (a) of Section 14838 of the Government Code.

(4) Establishes policies for training personnel in purchasing law and procedures, controlling and reviewing purchasing practices, auditing purchasing activities, and delegating purchasing authority within the agency.



(5) Reports the data to the office that the department may require.

(b) The department shall conduct an audit of each state agency to which purchasing authority has been delegated at least once in each three-year period. The authority to acquire goods may be withdrawn by the department at any time that the department finds that the state agency to which authority has been delegated is not in compliance with the requirements of this section.

SEC. 37. Section 10334 of the Public Contract Code is amended to read:

10334. (a) No state employee shall acquire any goods from the state, unless the goods are offered to the general public in the regular course of the state's business on the same terms and conditions as those applicable to the employee. "State employee," as used in this section, means any employee of the state included within Section 82009 of the Government Code, and all officers and employees included within Section 4 of Article VII of the California Constitution, except those persons excluded from the definition of "designated employee" under the last paragraph of Section 82019 of the Government Code.

(b) Notwithstanding subdivision (a), any peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, employed by the State of California for a period of more than 120 months who has been duly retired through a service retirement or a peace officer retiring from a job-incurred disability not related to a mental or emotional disorder and who has been granted the legal right to carry a concealed firearm pursuant to subdivision (a) of Section 12027 of the Penal Code may be authorized by the person's department head to purchase his or her state-issued handgun. Disability retired peace officers need not meet the 120-month employment requirement. The cost of the handgun shall be the fair market value as listed in the annual Blue Book of Gun Values or replacement cost, whichever is less, of the handgun issued as determined by the appointing power, plus a charge for the cost of handling. The retiring officer shall request to purchase his or her handgun in writing to the department within 30 calendar days of his or her retirement date.

(c) Notwithstanding subdivision (a), any peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code employed by the State of California who is authorized to carry firearms may purchase his or her state-issued service firearm if the person's department head directs the department to change its state-issued service weapon system. The cost of the service firearm shall be the fair market value as listed in the annual Blue Book of Gun Values or replacement cost, whichever is less, of the firearm issued as determined by the department head, plus a charge for the cost of handling. The requesting officer shall request to purchase his or her



firearm in writing to the department within 10 calendar days of receiving the new state-issued weapon.

SEC. 38. The heading of Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code is amended to read:

CHAPTER 3. ACQUISITION OF INFORMATION TECHNOLOGY GOODS AND
SERVICES

SEC. 39. Section 12100.5 of the Public Contract Code is amended to read:

12100.5. The Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the California Community Colleges shall not be subject to this chapter except that the trustees shall develop policies and procedures maintained in its state university administrative manual and the board shall adopt policies and procedures maintained in its administrative manual that further the legislative policies for contracting expressed in this chapter but without the involvement of the Director of Finance and the Director of General Services or the Department of Finance and the Department of General Services.

SEC. 40. Section 12100.7 of the Public Contract Code is amended to read:

12100.7. As used in this chapter:

- (a) "Department" means the Department of General Services.
- (b) "Director" means the Director of General Services.
- (c) "Information technology" shall have the same definition as set forth in Section 11702 of the Government Code.
- (d) "Multiple award schedule" (MAS) is an agreement established between the General Services Administration of the United States and certain suppliers to do business under specific prices, terms, and conditions for specified goods, information technology, and services.
- (e) "Multiple award" means a contract of indefinite quantity for one or more similar goods, information technology, or services to more than one supplier.
- (f) "Office" means the office in the department, by whatever name it may be called, which is responsible for contracting for goods and information technology, and is headed by the state procurement officer.
- (g) For purposes of this chapter, "value-effective acquisition" may be defined to include, but not be limited to, the following:
 - (1) The operational cost that the state would incur if the bid or proposal is accepted.
 - (2) Quality of the product or service, or its technical competency.
 - (3) Reliability of delivery and implementation schedules.

- (4) The maximum facilitation of data exchange and systems integration.
- (5) Warranties, guarantees, and return policy.
- (6) Supplier financial stability.
- (7) Consistency of the proposed solution with the state's planning documents and announced strategic program direction.
- (8) Quality and effectiveness of business solution and approach.
- (9) Industry and program experience.
- (10) Prior record of supplier performance.
- (11) Supplier expertise with engagements of similar scope and complexity.
- (12) Extent and quality of the proposed participation and acceptance by all user groups.
- (13) Proven development methodologies and tools.
- (14) Innovative use of current technologies and quality results.

SEC. 41. Section 12101 of the Public Contract Code is amended to read:

12101. It is the intent of the Legislature that policies developed by the Department of Information Technology and procedures developed by the Department of General Services in accordance with Section 12102 provide for:

- (a) The expeditious and value-effective acquisition of information technology goods and services to satisfy state requirements.
- (b) The acquisition of information technology goods and services within a competitive framework.
- (c) The delegation of authority by the Department of General Services to each state agency that has demonstrated to the department's satisfaction the ability to conduct value-effective information technology goods and services acquisitions.
- (d) The exclusion from state bid processes, at the state's option, of any supplier having failed to meet prior contractual requirements related to information technology goods and services.
- (e) The review and resolution of protests submitted by any bidders with respect to any information technology goods and services acquisitions.

SEC. 42. Section 12102 of the Public Contract Code is amended to read:

12102. The Department of Information Technology and the Department of General Services shall maintain, in the State Administrative Manual, policies and procedures governing the acquisition and disposal of information technology goods and services.

- (a) Acquisition of information technology goods and services shall be conducted through competitive means, except when the Director of General Services determines that (1) the goods and services proposed for acquisition are the only goods and services which can meet the state's need, or (2) the goods and services are needed in

cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety. The acquisition mode to be used and the procedure to be followed shall be approved by the Director of General Services. The Department of General Services shall maintain, in the State Administrative Manual, appropriate criteria and procedures to ensure compliance with the intent of this chapter. These criteria and procedures shall include acquisition and contracting guidelines to be followed by state agencies with respect to the acquisition of information technology goods and services. These guidelines may be in the form of standard formats or model formats.

(b) Contract awards for all large-scale systems integration projects shall be based on the proposal that provides the most value-effective solution to the state's requirements, as determined by the evaluation criteria contained in the solicitation document. Evaluation criteria for the acquisition of information technology goods and services, including systems integration, shall provide for the selection of a contractor on an objective basis not limited to cost alone.

(1) The Department of General Services shall invite active participation, review, advice, comment, and assistance from the private sector and state agencies in developing procedures to streamline and to make the acquisition process more efficient, including, but not limited to, consideration of comprehensive statements in the request for proposals of the business needs and governmental functions, access to studies, planning documents, feasibility study reports and draft requests for proposals applicable to solicitations, minimizing the time and cost of the proposal submittal and selection process, and development of a procedure for submission and evaluation of a single proposal rather than multiple proposals.

(2) Solicitations for acquisitions based on evaluation criteria other than cost alone shall provide that sealed cost proposals shall be submitted and that they shall be opened at a time and place designated in the solicitation for bids and proposals. Evaluation of all criteria, other than cost, shall be completed prior to the time designated for public opening of cost proposals, and the results of the completed evaluation shall be published immediately before the opening of cost proposals. The state's contact person for administration of the solicitation shall be identified in the solicitation for bids and proposals, and that person shall execute a certificate under penalty of perjury, which shall be made a permanent part of the official contract file, that all cost proposals received by the state have been maintained sealed and under lock and key until the time cost proposals are opened.



(c) The acquisition of hardware acquired independently of a system integration project may be made on the basis of lowest cost meeting all other specifications.

(d) The 5 percent small business preference provided for in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses.

(e) For all transactions formally advertised, evaluation of bidders' proposals for the purpose of determining contract award for information technology goods shall provide for consideration of a bidder's best financing alternatives, including lease or purchase alternatives, if any bidder so requests, not less than 30 days prior to the date of final bid submission, unless the acquiring agency can prove to the satisfaction of the Department of General Services that a particular financing alternative should not be so considered.

(f) Acquisition authority may be delegated by the Director of General Services to any state agency which has been determined by the Department of General Services to be capable of effective use of that authority. This authority may be limited by the Department of General Services. Acquisitions conducted under delegated authority shall be reviewed by the Department of General Services on a selective basis.

(g) To the extent practical, the solicitation documents shall provide for a contract to be written to enable acquisition of additional items to avoid essentially redundant acquisition processes when it can be determined that it is economical to do so.

Further, it is the intent of the Legislature that, if a state information technology advisory committee or a state telecommunications advisory committee is established by the Governor, the Director of Information Technology, or the Director of General Services, the policies and procedures developed by the Director of Information Technology and the Director of General Services in accordance with this chapter shall be submitted to that committee, including supplier representatives, for review and comment, and that the comment be considered by both departments prior to the adoption of any policy or procedure. It is also the intent of the Legislature that this section shall apply to the Department of General Services Information Technology Customer Council.

(h) Protest procedures shall be developed to provide bidders an opportunity to protest any formal, competitive acquisition conducted in accordance with this chapter. The procedures shall provide that protests must be filed no later than five working days after the issuance of an intent to award. Authority to protest may be limited to participating bidders. The Director of General Services, or a person designated by the director, may consider and decide on initial protests. A decision regarding an initial protest shall be final.

If prior to the last day to protest, any bidder who has submitted an offer files a protest with the department against the awarding of the contract on the ground that his or her bid or proposal should have been selected in accordance with the selection criteria in the solicitation document, the contract shall not be awarded until either the protest has been withdrawn or the State Board of Control has made a final decision as to the action to be taken relating to the protest. Within 10 calendar days after filing a protest, the protesting bidder shall file with the State Board of Control a full and complete written statement specifying in detail the grounds of the protest and the facts in support thereof.

(i) Information technology goods which have been determined to be surplus to state needs shall be disposed of in a manner that will best serve the interests of the state. Procedures governing the disposal of surplus goods may include auction or transfer to local governmental entities.

(j) A supplier may be excluded from bid processes if the supplier's performance with respect to a previously awarded contract has been unsatisfactory, as determined by the state in accordance with established procedures which shall be maintained in the State Administrative Manual. This exclusion may not exceed 360 calendar days for any one determination of unsatisfactory performance. Any supplier excluded in accordance with this section shall be reinstated as a qualified supplier at any time during this 360-day period, upon demonstrating to the department's satisfaction that the problems which resulted in the supplier's exclusion have been corrected.

SEC. 43. Section 12103 of the Public Contract Code is amended to read:

12103. In addition to the mandatory requirements enumerated in Section 12102, the acquisition policies developed and maintained by the Department of Information Technology and procedures developed and maintained by the Department of General Services in accordance with this chapter may provide for the following:

(a) Price negotiation with respect to contracts entered into in accordance with this chapter.

(b) System or equipment component performance, or availability standards, including an assessment of the added cost to the state to receive contractual guarantee of a level of performance.

(c) Requirement of a bond or assessment of a cost penalty with respect to a contract or consideration of a contract offered by a supplier whose performance has been determined unsatisfactory in accordance with established procedures maintained in the State Administrative Manual as required by Section 12102.

SEC. 44. Section 12104 of the Public Contract Code is amended to read:

12104. Beginning on December 15, 1993, and annually thereafter, the Department of General Services shall provide a report listing all

acquisitions from the previous fiscal year that were subject to this chapter and involved the replacement of a computer central processing unit when only one bid was received and the bid was from the supplier whose equipment was being replaced. The report shall be submitted to the chairperson of the committee in each house that considers appropriations and the Chairperson of the Joint Legislative Budget Committee.

SEC. 45. Section 12108 of the Public Contract Code is amended to read:

12108. Until the time that the Department of General Services has published in the State Administrative Manual the procedures required in accordance with Section 12102, acquisitions of information technology goods and services shall be accomplished in accordance with either existing State Administrative Manual procedures for the acquisition of information technology goods and services, or Article 2 (commencing with Section 14790) of Chapter 6 of Part 5.5 of Division 3 of Title 2 of the Government Code, as determined by the Department of General Services.

SEC. 46. Section 12109 of the Public Contract Code is amended to read:

12109. The Director of General Services may make the services of the department under this chapter available, upon the terms and conditions that may be deemed satisfactory, to any tax-supported public agency in the state, including a school district, for assisting the agency in the acquisition of information technology goods or services.

SEC. 47. Section 12111 of the Public Contract Code is repealed.

SEC. 48. Section 12112 of the Public Contract Code is amended to read:

12112. Any contract for information technology goods or services, to be manufactured or performed by the contractor especially for the state and not suitable for sale to others in the ordinary course of the contractor's business may provide, on the terms and conditions that the department deems necessary to protect the state's interests, for progress payments for work performed and costs incurred at the contractor's shop or plant, provided that not less than 10 percent of the contract price is required to be withheld until final delivery and acceptance of the goods or services, and provided further, that the contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the contract securing the faithful performance of the contract by the contractor.

SEC. 49. Section 12113 of the Public Contract Code is amended to read:

12113. (a) Notwithstanding any other provision of law, state and local agencies may enter into agreements to pay for telecommunications services to be utilized beyond the current fiscal year. "Telecommunications services" for purposes of this section



shall include, but not be limited to, central office-based leased communications systems equipped with primary station lines, capable of receiving in-dialed voice and data communications and capable of out-dialing voice and data communications and any customer premised equipment, software and installation costs necessary for utilization by the state or local agency.

(b) State and local agencies may enter into financing agreements for the acquisition of telecommunications services whenever the state or local agency may derive monetary benefit and greater services as a result of its ability to acquire capital at lower interest cost than the supplier of those services can provide directly to the agency or whenever the state or local agency may obtain a reduced cost of service based on length of agreement if offered by the supplier of telecommunications service.

(c) Acquisition requirements for financing of telecommunications goods and services shall be considered to have been met whenever the financing is within the scope of public sector requests for proposals or whenever the financing is offered by a sole source provider or that provider's assignee.

(d) The provisions of this section shall not be construed to alter or circumvent any existing acquisition procedure or requirement, nor to alter or circumvent the acquisition authority of any state or local agency.

SEC. 50. Section 12113.5 of the Public Contract Code is repealed.

SEC. 51. Section 12120 of the Public Contract Code is amended to read:

12120. The Legislature finds and declares that, with the advent of deregulation in the telecommunications industry, substantial cost savings can be realized by the state through the specialized evaluation and acquisition of alternative telecommunications systems. All contracts for the acquisition of telecommunications services and all contracts for the acquisition of telecommunications goods, whether by lease or purchase, shall be made by, or under the supervision of, the Department of General Services. All acquisitions shall be accomplished in accordance with Chapter 3 (commencing with Section 12100), relating to the acquisition of information technology goods and services, except to the extent any directive or provision is uniquely applicable to information technology acquisitions. The Department of General Services shall have responsibility for the establishment of policy and procedures for telecommunications. The Department of General Services shall have responsibility for the establishment of tactical policy and procedures for data-processing acquisitions consistent with statewide strategic policy as established by the Department of Finance. The Department of Finance shall have review and approval responsibility of data-processing information and telecommunication acquisitions to assure consistency with



budgetary objectives. The Trustees of the California State University and the Board of Governors of the California Community Colleges shall assume the functions of the Department of Finance and the Department of General Services with regard to acquisition of telecommunication goods and services by the California State University and the California Community Colleges, respectively. The trustees and the board shall each grant to the Department of General Services, Division of Telecommunications, an opportunity to bid whenever the university or the college system solicits bids for telecommunications goods and services.

SEC. 52. Section 2.5 of this bill incorporates amendments to Section 14838.5 of the Government Code proposed by both this bill and SB 1049. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, but this bill becomes operative first, (2) each bill amends Section 14838.5 of the Government Code, and (3) this bill is enacted after SB 1094, in which case Section 14838.5 of the Government Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of SB 1049, at which time Section 2.5 of this bill shall become operative.

SEC. 53. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the statutory changes necessary to increase small business participation in state contracts, it is necessary for this act to take effect immediately as an urgency measure.

